

No. 14/13/87-6Lab./1106.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s. Bhiwani Textile Mills, Bhiwani versus Ganpat.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 537 of 90

Date of receipt : 29th June, 1989

Date of decision : 1st December, 1994

SHRI GANPAT, S/O RAZARI, LABOUR COLONY, BHIWANI

... Applicant

Vs

M/S BHIWANI TEXTILE MILLS, BHIWANI

... Respondent-Management

Present :

Shri Parmod Kumar Sharma, for workman.

Shri M.M. Kaushal, for the management.

AWARD

In exercise of the powers conferred by clause (e) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Ganpat and the above mentioned management for adjudication to this Court,—vide Labour Department letter No. Bwn./433--88/25568--573, dated the 16th June, 1989 :—

Whether termination of services of Ganpat is justified and in order ?
If not, to what relief is he entitled ?

2. According to the applicant, he had been working as Line Jobber in Weaving Folding Department of the management for many years prior to 31st January, 1988 on which date the workman was informed by the management that he stood retired from service and that his services were no longer required. According to the workman, his date of birth, as per municipal record was 11th April, 1929 and that he had requested the management many a times that he had not completed the age of 60 years. It was, therefore, claimed that the action of the management in terminating his services, was malafide, arbitrary and against the principles of natural justice and was violative of provisions of the Act. He, therefore, prayed for taking him back on duty with continuity of service and all other benefits.

3. The management, in its written statement, denied that the date of birth of the applicant was 11th April, 1929. It was stated that the applicant attained the age of retirement in the year 1984, as per record

of the mill and that he was retired from service in terms of the settlement executed by the parties under section 12(3) of the Act, whereby he was allowed to work for one year more and this settlement was arrived at in the wake of demand notice served by the workman. It was, therefore, stated that the applicant was now estopped from filing the present demand notice. It was also stated that he was gainfully employed after retirement. In the preliminary objection, it was stated that since it is a case of retirement, no dispute under Section 2-A of the Act, could be raised and as such, there was no industrial dispute. It was also stated that the Government travelled beyond its jurisdiction to refer the present dispute.

4. On the pleadings of the parties, the following issues were framed on 28th July, 1990 by my learned predecessor :--

- (1) As per reference.
- (2) Whether the present dispute is with regard to retirement ? If so, to what effect ?
- (3) What is the actual date of birth of workman ?
- (4) Whether the workman is estopped from raising the present dispute ?
- (5) Whether the workman is gainfully employed ? If so, to what effect ?
- (6) Relief.

5. The parties led evidence in support of their rival claims. I have heard Shri Permod Kumar Sharma, Authorised Representative of the workman and Shri M.M. Kaushal, Authorised Representative of the management and have gone through the case file carefully. My findings on the above issues are as under :--

Issue No. 1 & 3 :

6. Both these issues are inter-connected and as such, are taken up together for purposes of facility.

7. Ganpat applicant, appeared as WW-1 and stated that he was illegally removed from service on 31st January, 1988 after treating his age as 60 years, though actually he has not attained the age of 60 years on that date. In cross-examination, he was confronted with settlement arrived at between the parties in 1986, but he denied the same. It is to be noted that Ganpat, WW-1 has nowhere stated on oath about his date of birth.

8. One Kishan Chand was examined as WW-2 and he stated that the applicant had not attained the age of 60 years, when he was retired on 31st January, 1988.

9. On behalf of the management, Attar Singh, Steno of Labour Officer, Bhiwani was produced as WW-1 and he testified the copy of settlement dated 16th December, 1986 as Ex. M-2 and the copy of demand notice raised by the workman as Ex. M-1. He also deposed that earlier the demand notice raised by the workman, was rejected on 30th November, 1988.

10. Bharat Bhushan Aggarwal was also examined by the management as MW-2 and he deposed that the applicant had entered into settlement with the management, which is Ex. M-2 and that it was signed by his late father at point 'A' in the circle. He also testified the copy of Provident Fund form submitted by the workman as Ex. M-5, copy of E.S.I. card Ex-6, copy of affidavit submitted by Ganpal applicant as Ex. M-7 and copies of applications submitted by the applicant as Ex. M-8 to Ex. M-10. He also testified other documents as Ex. M-11 to Ex. M-23.

11. The answer to the reference made by the Government hinges upon the question as to whether the workman had attained the age of superannuation on 31st January, 1988 and this question has to be decided in the wake of the date of birth of the workman. As already stated above, the workman in his statement made on 16th May, 1992, has not come out with his date of birth and so far as the birth entry Ex. M-3 is concerned the same was put by the management to Kishan Chand, WW-2 in his cross-examination. A perusal of the copy of Provident Fund form Ex. M-5 would show that in 1957 (or it may be 1959), the workman gave out his year of birth as 1922, however, on 27th August, 1981, the workman in his affidavit, a copy of which is Ex. M-7, gave out his date of birth as 9th November, 1931. In the applications Ex. M-8 and Ex. M-9, the workman came out with a different year of birth being 1928 and claimed it to be correct. There is nothing on the file to show that the workman ever during his service, claimed his date of birth as 11th April, 1929 as entered in the municipal extract Ex. M-3 and the workman, who appeared as WW-1, in this respect has not uttered a word that he ever represented to the management claiming his date of birth to be 11th April, 1929, as is now being agitated through the present demand notice.

12. It would thus be manifest that the applicant had been taking different stands at different times with regard to his date of birth and there is no material on the file to show that during his service, the workman ever based his claim on the date of birth entered in the municipal record as contained in Ex. M-3.

13. Shri Parmod Kumar Sharma, A.R. of the workman argued that the date of birth given in Birth and Death register shall prevail over other documents and it is most trust-worthy document to prove date of birth of a person. Reliance in this connection was placed on the authority of GURMEJ SINGH vs THE STATE OF PUNJAB, 1983 (II) LLR-388. There is no dispute with the law enunciated in this case. However since Ex. M-3 does not contain the name of the applicant, the workman was required to produce evidence to connect this entry with him and in the absence of such evidence, it can not be said that the birth entry contained in Ex. M-3 relates to the workman and none else. This copy was obtained by the workman on 18th December, 1985, but surprisingly it was never pressed or referred to in various applications submitted by the workman to the management, — vide Ex. M-14 to Ex. M-19.

14. Moreover, it would be seen that the workman had entered into settlement with the management under section 12(3) of the Act and this settlement has been proved by Attar Singh, Steno, MW-1. Through this settlement the workman was allowed to work for another one year on compassionate grounds and was retired on 31st January, 1986. In this way, the workman was allowed to work for two months more in addition to one year stipulated in the settlement Ex. M-2 and the workman now can not be allowed to say that he had not attained the age of superannuation

as on 31st January, 1988. It is to be noticed that during the conciliation proceedings, which led to this settlement on 16th December, 1986, the workman did not press his date of birth being 11th April, 1929 as contained in extract of municipality Ex. M-3.

15. The other authority cited by the Ganpat workman and reported as DEEP NARAIN PANDEY Vs UNION OF INDIA, Suit No. 491/83, decided by Central Administrative Tribunal on 31st January, 1987 (photostat copy received by post) does not help the workman because the issue before me is not the correction of date of birth of the applicant.

16. In the light of discussion above, the termination of services of the workman on 31st January, 1988 on his attaining the age of retirement, is justified and in order and the workman is not entitled to any relief. Both these issues are decided accordingly, against the workman.

Issue No. 2 :

17. This reference pertains to the termination of services of the workman and though this question is founded on the plea of the workman having attained the age of retirement, but it can not be said that the present reference is with regard to the retirement of the workman. This Court is bound to decide the reference on merits once made by State Government. I, therefore, answer this issue against the management.

Issue No. 4 & 5 :

Both these issues were not pressed by the A.R. of the management and were conceded to by him during arguments. Both these issues are decided against the management.

Issue No. 6-Relief :

19. In view of my findings on the above issues, the action of the management in terminating the services of the workman on the age of superannuation, is justified and in order and the petitioner is not entitled to any relief. The reference is answered accordingly, with no order as to costs.

Dated the 1st December, 1994.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No.

Dated :

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government Haryana Labour and Employment Department Chandigarh, for necessary action.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.